

FRED UPTON, MICHIGAN
CHAIRMAN

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FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

*Spectrum
Incentive
Auctions*

June 23, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to thank you for taking a fresh look at the policies the Federal Communications Commission applies to small businesses seeking to participate in spectrum auctions and the wireless marketplace. It is now time to adopt final rules that encourage meaningful participation by actual small businesses in the wireless market.

Small businesses are the engines of our nation's economy. Approximately half of all workers in the country are employed by small businesses. But in capital-intensive industries like telecommunications, these small businesses simply cannot compete without smart policies. That is why we called on the FCC earlier this year to modernize its Designated Entity program. This program has served to boost small business participation in wireless auctions for the past two decades. But the market has changed dramatically and the program must now be revamped in a way that recognizes these changes and better serves small businesses. At the same time, the new rules must not encourage or provide incentives for gaming by major corporations.

Since we first called for the FCC to modernize its small business policies, the Commission has collected a robust and thorough record. We believe the record demonstrates that the best way to ensure that the Commission's policies benefit genuine small businesses is to take a two-pronged approach.

First, the FCC must curb gaming by multi-billion dollar corporations by limiting the size of the small business credit that any one entity can receive. Any cap must strike a careful balance, however. Bidding credits must be significant enough to give real small businesses a fair shot at winning spectrum in any market. But the credit should not be so large to incent major corporations to use it to gain an unfair advantage under the guise of being a small business. In addition to imposing a cap on bidding credits, the FCC should adopt additional measures that limit the ability of large corporations to take advantage of this program.


Second, the Commission's updated policy should finally shelve outdated requirements that have not kept up with developments in the wireless marketplace. For example, the Attributable Material Relationship (AMR) rule has outlived its usefulness. This dusty relic served a purpose, but in today's dynamic wireless market it only constrains innovation. It does nothing more than artificially restrict the types of business models small businesses may use. So rather than use regulations to shackle creative entrepreneurs that are providing new services to consumers, we urge the Commission to toss this dated rule. Similarly, the Commission should liberalize its policies regarding facilities based services and allow small businesses to explore wholesale and leasing opportunities in the same way larger companies are allowed. If the largest corporations are unable to stand up new facilities based networks to compete with the biggest wireless providers, it makes no sense to require small businesses to do so. Finally, any new rules should provide flexibility for small businesses to make strategic decisions about how to run its business and to change course as it sees fit. While a small business may choose to forego benefits on one license, that should not preclude it from eligibility on others.

It is time to recognize that there may be other ways to enter and compete in the wireless marketplace. The FCC should not be telling small businesses how to do so but instead allow for small business innovators to do what they do best.

Taken together, we believe these rule changes—caps to curb gaming and elimination of outdated policies like the AMR rule—combine to provide a powerful one-two punch that can help jumpstart a small business renaissance in the wireless market. By adopting these policies that promote small businesses, the Commission will help boost the economy, foster diversity, and ultimately pay dividends for consumers. We urge you to act soon to bring the Designated Entity program into the modern wireless era.

Sincerely,


Frank Pallone, Jr.


Bobby L. Rush


G. K. Butterfield


Doris O. Matsui


Ben Ray Luján


Yvette D. Clarke



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 24, 2015

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pallone:

Thank you for your letter regarding the Commission's efforts to update our competitive bidding rules to provide small businesses and rural service providers with greater flexibility to compete in today's wireless marketplace. I appreciate your leadership and support for our efforts to ensure that *bona fide* small businesses and eligible rural service providers have the opportunity to participate in our spectrum auctions and in the provision of spectrum-based services.

To that end, the Commission recently adopted a Report & Order updating our competitive bidding rules to reflect the dramatic changes in the wireless marketplace since they were last updated in 2006. In 2006, the top four national carriers served 82 percent of the market; today the top four national carriers serve 98 percent of all subscribers. Given these changes, the Commission acted in order to provide *bona fide* small businesses and eligible rural service providers a better on-ramp into the wireless industry, and provide small and eligible rural providers with flexibility to make business decisions with the goal creating more wireless choices for consumers.

More specifically, by eliminating the Attributable Material Relationship (AMR) rule and the requirement that small businesses provide facilities-based services, we provide small businesses with the flexibility they need to gain experience in operations and investment. *Bona fide* small business must have the opportunity to make business decisions on how best to utilize their spectrum capacity and should not be unreasonably penalized in future spectrum auctions because of those decisions. The Report & Order also creates a bidding credit for rural service providers that will incentivize participation in future auctions and facilitate competition in rural areas.

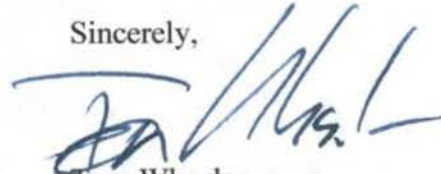
While improving the designated entity program to better serve small businesses and eligible rural providers, the Report & Order will also enhance the integrity of the FCC auction process and ensure that only *bona fide* small businesses and eligible rural service providers benefit from bidding credits. Simply put, we will not allow small businesses to serve as a stalking horse for another party. Therefore, the Report & Order establishes the first-ever cap on the total amount of bidding credits, minimizing an incentive for major corporations to try to take advantage of the program. It also limits the amount of spectrum that a small business or rural

service provider may lease to its disclosable, non-controlling investors during the five-year unjust enrichment period. Further, the revised rules clarify that joint bidding agreements involving a shared strategy for bidding at auction between designated entities (including small businesses and rural service providers) and nationwide service providers will not be permitted.

Ultimately, the reforms adopted in the Report & Order will increase the economic opportunity for small and rural businesses, as well as ensure that the beneficiaries of our competitive bidding rules are those intended by Congress.

Thank you for your ongoing support of our efforts to promote competition and choice in mobile broadband.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish extending to the right.

Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 24, 2015

The Honorable G. K. Butterfield
U.S. House of Representatives
2305 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Butterfield:

Thank you for your letter regarding the Commission's efforts to update our competitive bidding rules to provide small businesses and rural service providers with greater flexibility to compete in today's wireless marketplace. I appreciate your leadership and support for our efforts to ensure that *bona fide* small businesses and eligible rural service providers have the opportunity to participate in our spectrum auctions and in the provision of spectrum-based services.

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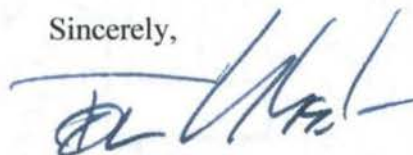
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Thank you for your ongoing support of our efforts to promote competition and choice in mobile broadband.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 24, 2015

The Honorable Yvette D. Clarke
U.S. House of Representatives
2351 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Clarke:

Thank you for your letter regarding the Commission's efforts to update our competitive bidding rules to provide small businesses and rural service providers with greater flexibility to compete in today's wireless marketplace. I appreciate your leadership and support for our efforts to ensure that *bona fide* small businesses and eligible rural service providers have the opportunity to participate in our spectrum auctions and in the provision of spectrum-based services.

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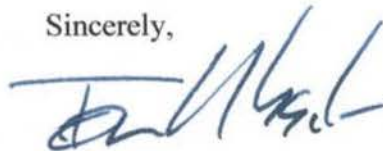
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Thank you for your ongoing support of our efforts to promote competition and choice in mobile broadband.

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 24, 2015

The Honorable Ben Ray Luján
U.S. House of Representatives
2446 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Luján:

Thank you for your letter regarding the Commission's efforts to update our competitive bidding rules to provide small businesses and rural service providers with greater flexibility to compete in today's wireless marketplace. I appreciate your leadership and support for our efforts to ensure that *bona fide* small businesses and eligible rural service providers have the opportunity to participate in our spectrum auctions and in the provision of spectrum-based services.

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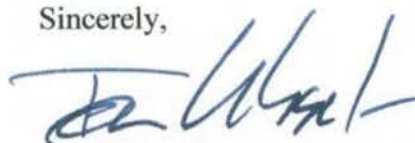
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 24, 2015

The Honorable Doris O. Matsui
U.S. House of Representatives
2434 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Matsui:

Thank you for your letter regarding the Commission's efforts to update our competitive bidding rules to provide small businesses and rural service providers with greater flexibility to compete in today's wireless marketplace. I appreciate your leadership and support for our efforts to ensure that *bona fide* small businesses and eligible rural service providers have the opportunity to participate in our spectrum auctions and in the provision of spectrum-based services.

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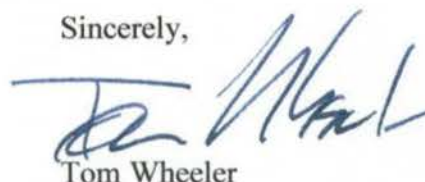
Page 2—The Honorable Doris O. Matsui

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 24, 2015

The Honorable Bobby L. Rush
U.S. House of Representatives
2268 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rush:

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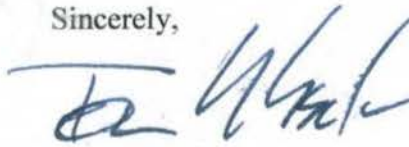
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